SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 74-791

GEORGE W. SIBLEY, M.D.,

PETITIONER,

V.

HORN ADVERTISING, INC.,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS
5th SUPREME JUDICIAL DISTRICT
OF TEXAS

BRIEF FOR RESPONDENT

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OPINION BELOW

The opinion delivered in the Court below was officially reported in 505 S.W.2d 417, (Civ.App., 1974) ref.n.r.e.

JURISDICTION

Respondent does not question jurisdiction based on a Federal Act.

QUESTIONS PRESENTED

Respondent excepts to Petitioner's first question. It is based on a false assumption of facts. The facts as determined by the jury, the Trial Court and the Appellate Court were contrary to the statement: (Petition, page 6)

> "...he executed a subscription agreement because of misstated material facts and omissions to state material facts."

STATEMENT OF THE CASE

The factual statement of the case set forth in the opinion of the Court of Civil Appeals of Texas, (Appendix B), is substantially correct. The Petitioner's statement of the case is inaccurate, particularly as to the following portions: (Petition, page 3)

> "After a suggestion by Fanning to Sibley that he ought to obtain at least an option to buy stock in Computer, (which company Fanning represented), because, according to Fanning, the stock was soon to go public,..."
>
> "...called Fanning and asked him whether or not the documents which Laseter sought to have him sign were for the purpose of obtaining the option they had discussed several days previously. Assured by Fanning that such was the case, Sibley signed what turned out to be a subscription agreement..."

ARGUMENT

Petitioner sets forth his primary argument when he says: (Petition, page 12)

> "The failure to disclose essential facts about the merits of the investment (not to mention affirmative misstatements) is the crux of this case."

The statutes and rules which Petitioner alleges are involved, i.e., Securities Act of 1933, Section 12; Securities Act of 1933, Section 17, and the Securities Act of 1934, Rule 10b-5, are almost verbatim in their

requirement that untrue statements or omissions are necessary proof of violations, as set forth in the Securities Act of 1933, Section 12(2): (Petition, page 7)

> "...which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading..."

The Court of Civil Appeals of Texas accurately, swiftly and finally disposed of the question of misstatement of facts, (Appendix, B-3):

> "The misrepresentation issue was tried to a jury, and no misrepresentation was found."

The Court of Civil Appeals of Texas fully discussed the question of non-disclosure under the Federal Securities Acts and under the Texas Securities Act, and summarized the entire matter as follows, (Appendix, B-8):

> "Defendant does not allege, nor does he point out here, any statement made to him that was rendered misleading because of absence of information alleged to have been omitted. We do not see how any of the facts alleged to have been omitted would have served to prevent a misleading interpretation of the information given."

The above two statements by the Court of Civil Appeals of Texas very succintly settles the question of misstated and omitted statements, as they relate to this case. There were no misstatements nor omissions; therefore, there were no violations. What more can be said?

CONCLUSION

For the reasons stated above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BY: William M. Jones

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CERTIFICATE OF SERVICE

A true copy of the foregoing Brief for Respondent on Petition for Writ of Certiorari has this day been served upon George W. Sibley, M.D. by placing same in the United States Mail, postage prepaid, addressed to KENT H. ROWTON, 2001 Bryan Tower, Suite 1712, Dallas, Texas 75201, and JOHN D. GILLILAND, 2001 Bryan Tower, Suite 2663, Dallas, Texas 75201, Attorneys for Petitioner.

William M. Jones